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10/562,815	05/25/2006	Jacques Granger	0580-1036	6567

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YOUNG & THOMPSON  
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Alexandria, VA 22314

EXAMINER
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VOLZ, ELIZABETH J

ART UNIT	PAPER NUMBER
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3781

NOTIFICATION DATE	DELIVERY MODE
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12/28/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/562,815	<b>Applicant(s)</b> GRANGER, JACQUES	
	<b>Examiner</b> ELIZABETH VOLZ	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 56-110 is/are pending in the application.
- 4a) Of the above claim(s) 74-80,88-98 and 103 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 56-73,81-87,99-102 and 104-110 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/27/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 56-73, 81-87, 99-102 and 104-110 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 56 recites the limitation "the neck" in Line 3 and "D2" in Line 24. There is insufficient antecedent basis for this limitation in the claim.

4. Claim 66 recites the limitation "said expanded skirt" in Line 4. There is insufficient antecedent basis for this limitation in the claim.

5. Claim 69 recites the limitation "said locking ring" in Line 5. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 70 recites the limitation "the groove" in Line 3. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 104 recites the limitation "said add-on seal" in Line 4, "said spout" in Line 5, and "the anti-fill device" in Line 5. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 56-73, 81, 83-87, 99, 102 and 104-107 are rejected under 35 U.S.C.

103(a) as being unpatentable over Granger et al. (U.S. Pub. No. 2003/0021919) in view of Cox (WO 94/20237).

10. Regarding Claims 56 and 104, Granger et al. discloses a stopper capsule designed as a screw stopper for a container typically designed to contain alcoholic drinks, and comprising a bottle 5 (Figure 7) in which the neck is provided with an outer thread 50 (Figure 7), comprising two parts fixed together in rotation and axially by an assembly means, a) an inner part or insert 3 (Figure 7) with height h, made of plastic material (Paragraph 68), comprising an inner head 30 (Figure 7) and an inner skirt 31 (Figure 7), the said inner skirt comprising an inner thread 32 (Figure 7) on its inside surface designed to cooperate with the thread of the said neck so as to be able to screw the said capsule to the said neck along a rotation axis or an axial direction, and b) an outer part or shell 2 (Figure 7) with height H, comprising an outer head 20 (Figure 7) and an outer skirt 21 (Figure 7) masking all or part of the said inner skirt facing it, the said capsule being provided with a sealing means and wherein: 1) the said outer skirt of the said shell comprises at least a substantially cylindrical part with height H1, diameter D1 adapted to the said neck, the said substantially cylindrical part of the said shell radially clamping the said inner skirt of the said insert like a hoop at least facing the said inner thread (Figure 7). Granger et al. does not teach a tamper-evident ring or an expanded part with a height H2, inscribed in a circle with a diameter  $D2 > D1$  and forming an annular radial cavity. However, Cox teaches a tamper-evident ring 4 (Figure 4) and

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an expanded part 19 (Figure 4) forming an annular radial cavity (Figure 4). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Granger et al. to include a tamper-evident ring and an expanded part, as taught by Cox, in order to identify when the capsule has been tampered with and allow for a better grip on the capsule.

11. Regarding Claim 57, Granger et al. teaches all the limitations substantially as claimed except for an expanded part which forms an annular, continuous or discontinuous ring, its upper part being connected to the said cylindrical part and its lower part being connected to the said cylindrical part. However, Cox teaches an expanded part 19 (Figure 4). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Granger et al. to include an expanded part, as taught by Cox, in order to provide a better grip on the capsule.

12. Regarding Claim 58, Granger et al. discloses all or part of the said inner skirt 31 (Figure 7) of the said insert cooperates with all or part of the said substantially cylindrical part 21 (Figure 7) of the said outer skirt, so as to form the said assembly means (Figure 7).

13. Regarding Claim 59, Granger et al. teaches all the limitations substantially as claimed except for all or part of the said inner head of the said insert is facing the said expanded part of the said shell. However, Cox teaches expanded part 19 (Figure 4). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Granger et al. to include an expanded part, as taught by Cox, in order to provide a better grip on the capsule.

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14. Regarding Claim 60, Granger et al. and Cox disclose the claimed invention except for the height of the radially expanded part is at least 2 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made have an expanded part with a height of at least 2 mm since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

15. Regarding Claim 61, Granger et al. and Cox disclose the claimed invention except for a diameter (D1) which varies from 15 mm to 60 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a diameter which varies from 15 mm to 60 mm since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

16. Regarding Claim 62, Granger et al. and Cox disclose the claimed invention except for a D2/D1 ratio which varies from 1.02 to 1.15. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a D2/D1 ratio which varies from 1.02 to 1.15 since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

17. Regarding Claim 63, Granger et al. teaches all the limitations substantially as claimed except for a substantially cylindrical part and an expanded part which are connected by at least one intermediate part. However, Cox teaches a substantially cylindrical part 2 (Figure 4) and an expanded part 19 (Figure 4) which are connected by

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at least one intermediate part 19a (Figure 4). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Granger et al. to include a cylindrical part connected to an expanded part by an intermediate part, as taught by Cox, in order to provide a better grip on the capsule. Granger et al. and Cox disclose the claimed invention except for an intermediate part with an average slope which varies from 0.5 to 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an intermediate part with an average slope which varies from 0.5 to 2 since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

18. Regarding Claim 64, Granger et al. and Cox disclose the claimed invention except for an expanded part and a cylindrical part connected together by a radius of curvature  $R_2$  varying from 1.5 mm to change in  $D$  over 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an expanded part and a cylindrical part connected together by a radius of curvature  $R_2$  varying from 1.5 mm to change in  $D$  over 2 since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

19. Regarding Claim 65, Granger et al. teaches all the limitations substantially as claimed except for an expanded part which is adjacent to the said outer head in its upper part, and to the said cylindrical part of the said outer skirt in its lower part. However, Cox teaches an expanded part 19 (Figure 4) which is adjacent to the said

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outer head in its upper part (Figure 4), and to the said cylindrical part 2 (Figure 4) of the said outer skirt in its lower part (Figure 4). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Granger et al. to include an expanded part which is adjacent to the said outer head in its upper part, and to the said cylindrical part of the said outer skirt in its lower part, as taught by Cox, in order to provide a better grip on the capsule. Granger et al. and Cox disclose the claimed invention except for an outer head and an expanded part being connected by a radius of curvature  $R1$  varying from 1.5 mm to 5 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an outer head and an expanded part being connected by a radius of curvature  $R1$  varying from 1.5 mm to 5 mm since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

20. Regarding Claim 66, Granger et al. teaches all the limitations substantially as claimed except for an upper part and lower part of the said expanded part which is adjacent to the said cylindrical part of the said outer skirt, the said expanded skirt being an expanded skirt at a spacing from or offset from the said outer head. However, Cox teaches an upper part and lower part of the said expanded part 19 (Figure 4) which is adjacent to the said cylindrical part 2 (Figure 4) of the said outer skirt, the said expanded skirt being an expanded skirt at a spacing from or offset from the said outer head (Figure 4). Therefore, it would have been obvious for one of ordinary skill in the



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art at the time the invention was made to modify Granger et al. to include an expanded part, as taught by Cox, in order to provide a better grip for the capsule.

21. Regarding Claim 67, Granger et al. teaches all the limitations substantially as claimed except for an inner head of the said insert is facing all or part of the said expanded part so that the inner thread of the said inner threaded skirt of the said insert is facing the said cylindrical part of the said outer skirt. However, Cox teaches an inner head of the said insert 6 (Figure 4) is facing all or part of the said expanded part 19 (Figure 4) so that the inner thread of the said inner threaded skirt of the said insert is facing the said cylindrical part of the said outer skirt (Figure 4). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Granger et al. to include an expanded part, as taught by Cox, in order to provide a better grip for the capsule.

22. Regarding Claim 68, Granger et al. teaches all the limitations substantially as claimed except for an inner head of the said insert which comprises an arch in contact with the said sealing means and a recessed spacing means above the said arch, formed from spaced concentric rings in contact with the said outer head. However, Cox teaches an inner head of the said insert 6 (Figure 4) which comprises an arch (Figure 1) in contact with the said sealing means and a recessed spacing means 8 (Figure 1) above the said arch, formed from spaced concentric rings in contact with the said outer head (Figure 2). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made except for a recessed spacing means, as taught by Cox, in order to add support to the insert.

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23. Regarding Claim 69, Granger et al. teaches all the limitations substantially as claimed except for a capsule which seals the said neck by screwing, the axial height of the said expanded part such that it is above the said outer thread of the said neck and above the said locking ring of the said neck. However, Cox teaches a capsule which seals the said neck by screwing (Figure 4), the axial height of the said expanded part 19 (Figure 4) such that it is above the said outer thread of the said neck (Figure 4) and above the said locking ring 12 (Figure 4) of the said neck (Figure 4). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Granger et al. to include an expanded part, as taught by Cox, in order to provide a better grip for the capsule.

24. Regarding Claims 70-72, Granger et al. and Cox disclose the claimed invention except for the thickness of the inner skirt of the insert at the bottom of the groove varies between 0.1 mm and 0.5 mm, the insert having a height  $h_1$  varying from 6 mm to 20 mm, and the ratio  $H/h_1$  may vary from 1.1 to 4. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the thickness of the inner skirt of the insert at the bottom of the groove to vary between 0.1 mm and 0.5 mm, the insert having a height  $h_1$  varying from 6 mm to 20 mm, and the ratio  $H/h_1$  may vary from 1.1 to 4 since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

25. Regarding Claim 73, Granger et al. teaches all the limitations substantially as claimed except for an outer skirt which includes the said tamper-evident means, the

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said outer skirt being capable of forming a crimped zone under the said tamper-evident ring and the said first opening means, the said outer skirt comprising a line of weakness fixing a guarantee strip above the said line of weakness by narrow connecting strips, and capable of forming the said crimped zone. However, Cox teaches an outer skirt 2 (Figure 4) which includes the said tamper-evident means 4 (Figure 4), the said outer skirt being capable of forming a crimped zone 12 (Figure 4) under the said tamper-evident ring and the said first opening means, the said outer skirt comprising a line of weakness fixing a guarantee strip above the said line of weakness by narrow connecting strips 10 (Figure 4), and capable of forming the said crimped zone.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Granger et al. to include a tamper-evident ring, as taught by Cox, in order to identify if the capsule has been tampered with.

26. Regarding Claim 81, Granger et al. teaches all the limitations substantially as claimed except for an expanded part which has a circle profile. However, Cox teaches an expanded part 19 (Figure 4) with a circle profile. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Granger et al. to include an expanded part, as taught by Cox, in order to provide a better grip on the capsule.

27. Regarding Claim 83, Granger et al. discloses assembly means fixing the said inner part and outer part in rotation and axially comprises a mechanical or chemical anchor means, by gluing the said inner part and outer part (Paragraph 72).

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28. Regarding Claim 84, Granger et al. discloses an inner skirt 31 (Figure 7) which cooperates with the said cylindrical part facing it, over all or part of the said height h, due to an adhesive layer fixing the said inner skirt and the said cylindrical part (Paragraph 72).

29. Regarding Claim 85, Granger et al. discloses an outer part or shell 2 (Figure 7) which is made of aluminum, tin or a metalloplastic multi-layer material with a deformation under stress similar to the deformation of aluminum or tin (Paragraph 47).

30. Regarding Claim 86, Granger et al. discloses an outer part 2 (Figure 7) which is made of aluminum treated on the surface, brushed or anodized, to create a metallic appearance or color (Paragraph 47).

31. Regarding Claim 87, Granger et al. discloses an inner part 3 (Figure 7) which is an insert molded from a thermoplastic material comprising one or several mineral fillers (Paragraph 52).

32. Regarding Claim 99, Granger et al. discloses a spout or an anti-fill device 7 (Figure 7) which is fixed reversibly to the said insert to the said sealing means due to an inner ring of the said insert temporarily cooperating with a peripheral skirt of the said spout the said anti-fill device (Figure 7).

33. Regarding Claim 100, Granger et al. teaches all the limitations substantially as claimed except for a plurality of flexible annular tabs. However, Cox teaches flexible annular tabs 14 (Figure 4). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Granger et al. to include flexible annular tabs, as taught by Cox, in order to keep the insert in place.

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34. Regarding Claim 101, Granger et al. teaches all the limitations substantially as claimed except for an annular radial cavity filled with a material so as to fix the insert in the shell. However, Cox teaches a material 19a (Figure 4) in an annular radial cavity to fix the insert in the shell (Page 13, Lines 29-35).

35. Regarding Claim 102, Granger et al. teaches all the limitations substantially as claimed except for a radially expanded part which has a non-circular section in a plane perpendicular to the said axial direction so as to facilitate gripping and manual rotation of the said capsule. However, Cox teaches a radially expanded part 19 (Figure 4) which has a non-circular section in a plane perpendicular to the said axial direction so as to facilitate gripping and manual rotation of the said capsule (Page 13, Lines 27-29). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Granger et al. to include an expanded part, as taught by Cox, in order to provide a better grip on the capsule.

36. Regarding Claims 105-110, the claimed phrase "said local radial expansion is obtained by axial compression of an expandable punch in the said blank placed in a shaping die forming a radial cavity with a profile similar to the profile of the said expanded part, the said expandable punch forcing a part of the said outer skirt radially into contact with the said inner wall of the said radial cavity, due to the said axial compression, obtained by axial displacement of a slide, said local radial expansion is an expansion progressively extending in the axial direction, the said expandable punch starting to apply its action at the bottom part of the said blank closest to the said outer head then progressively continuing to exert its action by moving away from the said

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outer head, so as to enable free creep of the said outer skirt in the said cavity, the said free creep being made possible by progressive blocking of the said skirt from the said outer head the remainder of the said skirt not being blocked in contact with the said die by the said expandable punch, so as to progressively form the said expanded part in the axial direction without any risk of metal breakage and the expandable punch has an axial profile adapted to obtaining the said progressive expansion by radial compression, and the expansion part is formed by a slide with a shoulder” is being treated as a product-by-process limitation and since it has been held that a product-by-process limitation is not construed as being limited to the product formed by the specific process recited, therefore, even though Granger et al. and Cox are silent as to the process used, it appears that the Granger et al. and Cox's product would be the same or similar as that claimed, especially since both applicant's product and the prior art product is made of a metal outer closure with a plastic insert.

37. Claim 82 is rejected under 35 U.S.C. 103(a) as being unpatentable over Granger et al. (U.S. Pub. No. 2003/0021919) in view of Cox (WO 94/20237) and Robinson (U.S. Patent No. 5,915,576).

38. Regarding Claim 82, Granger et al. and Cox teach all the limitations substantially as claimed except for a plurality of notches in the outer skirt. However, Robinson teaches notches 94 (Figure 4). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Granger et al. and Cox to include notches, as taught by Robinson, in order to provide a better grip when twisting the capsule. Granger et al., Cox and Robinson disclose the claimed invention

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except for an outer skirt which forms a surface of revolution over all or part of its height H, with a constant or variable radius depending on the height considered, or has a symmetry of rotation with angle  $360^\circ/N$  where H varies from 4 to 80. It would have been obvious to one having ordinary skill in the art at the time the invention was made to an outer skirt which forms a surface of revolution over all or part of its height H, with a constant or variable radius depending on the height considered, or has a symmetry of rotation with angle  $360^\circ/N$  where H varies from 4 to 80 since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

39. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH VOLZ whose telephone number is (571) 270-5430. The examiner can normally be reached on Monday-Thursday, 8am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. V./  
Examiner, Art Unit 3781

/Anthony Stashick/  
Supervisory Patent Examiner, Art  
Unit 3781